

REMARKS

In the Office Action, the Examiner rejected claims 1-20. In this paper, no claims have been cancelled, added, or amended. Claims 1-20 remain pending in the present application and are believed to be in condition for allowance. In view of the following remarks, the Applicants respectfully request reconsideration and allowance of all pending claims.

Claim Rejections under 35 U.S.C. § 102

In the Office Action, the Examiner rejected claims 1-3 under U.S.C. § 102(e) as anticipated by U.S. Patent No. 5,867,714 to Todd et al. ("Todd") and claims 9-11 under U.S.C. § 102(e) as anticipated by U.S. Publication No. 2002/0143975 to Kimura et al. ("Kimura"). Applicants respectfully traverse these rejections.

Legal Precedent

When construing claims, the Federal Circuit has consistently looked first to dictionaries, encyclopedias, and treatises, which were publicly available at the time the patent issued, to determine the ordinary and custom meanings of terms used in claims. As stated in *Texas Digital Systems, Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202-03:

Such references are unbiased reflections of common understanding not influenced by expert testimony or events subsequent to the fixing of the intrinsic record by the grant of the patent, not colored by the motives of the parties, and not inspired by litigation. Indeed, these materials may be the most meaningful source of information to assist judges in better understanding both the technology and the terminology used by those skilled in the art to describe the technology.

The *Texas Digital* court further stated that "[c]onsulting the written description and prosecution history as a threshold step in the claim construction process, before any effort is made to discern the ordinary and customary meanings attributed to the words themselves, invites a violation of our precedent counseling against importing limitations into the claims." *Id.* at 1204 (cited with approval in *Intellectual Property*

Development Inc. v. UA-Columbia Cablevision of Westchester Inc., 67 U.S.P.Q. 2d 1385, 1389 (Fed. Cir. 2003)).

Furthermore, anticipation under section 102 can be found only if a single reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985). For a prior art reference to anticipate under section 102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). To maintain a proper rejection under section 102, a single reference must teach each and every limitation of the rejected claim. *Atlas Powder v. E.I. du Pont*, 750 F.2d 1569 (Fed. Cir. 1984). Accordingly, the Applicants need only point to a single element not found in the cited reference to demonstrate that the cited reference fails to anticipate the claimed subject matter. The prior art reference also must show the *identical* invention “in as complete detail as contained in the ... claim” to support a *prima facie* case of anticipation. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989).

Features of Independent Claim 1 and Its Dependent Claims Omitted from Todd

Turning to the claims, independent claim 1 recites a method comprising “detecting audio settings of the *remote* computer system; *transmitting* the audio settings to an *interfacing* computer system via a network; and *configuring* audio circuitry of the *interfacing* computer system based on the audio settings.”

In contrast, Todd discloses a computer system 110 that transmits its “configuration data” to a remote data source 130, such that the remote data source 130 can identify conflicts in the configuration of the computer system 110 and transmit software “revisions” back to the computer system 110 to fix the configuration conflicts. Todd, col. 3, lines 19-33; col. 12, lines 1-8; col. 13, lines 5-15. As discussed in the following two hypothetical arguments, Todd lacks either the act of “detecting audio settings of the remote computer system,” or the act of “configuring audio circuitry of the interfacing computer system based on the audio settings,” recited in independent claim 1.

For the sake of hypothetical argument, if the computer system 110 in Todd is interpreted as the remote computer system in claim 1 and if the remote data source 130 in Todd is interpreted as the interfacing computer system in claim 1, then Todd is missing “configuring audio circuitry of the *interfacing computer system* based on the audio settings,” as recited in claim 1. (Emphasis added). Specifically, in Todd, the remote data source 130 (hypothetically interpreted as the “interfacing computer”) transmits software “revisions” back to the computer system 110 to fix the computer system’s configuration conflicts, yet the remote data source 130 is not itself configured in any way. *See id.* In other words, the initial detection and subsequent revisions of configuration data are both related to the same computer system 110. *See id.* Thus, according to this hypothetical argument, Todd lacks the act of “configuring audio circuitry of the *interfacing computer system* based on the [detected] audio settings,” of the *remote* computer system, as recited in claim 1.

Alternatively, for the sake of hypothetical argument, if the remote data source 130 in Todd is interpreted as the remote computer system in claim 1 and if the computer system 110 in Todd is interpreted as the interfacing computer system in claim 1, then Todd is missing “detecting audio settings of the *remote computer system*.” (Emphasis added). Specifically, in Todd, the remote data source 130 (hypothetically interpreted as the “remote computer system”) transmits software “revisions” back to the computer system 110 to fix the computer system’s configuration conflicts, yet the audio settings of the remote data source 130 are never detected. *See id.* Again, the initial detection and subsequent revisions of configuration data are both related to the same computer system 110. *See id.* Thus, according to this hypothetical argument, Todd lacks the act of “detecting audio settings of the *remote computer system* for use in configuring the *interfacing computer system*,” as recited in claim 1.

For Todd to anticipate claim 1, either the first or the second hypothetical argument must be made, neither of which permits an interpretation of Todd that

anticipates claim 1. In view of these deficiencies, Todd cannot anticipate independent claim 1 or its dependent claims.

Features of Independent Claim 9 and Its Dependent Claims Omitted from Kimura

The present independent claim 9 recites a method comprising: “*detecting* audio data generated *at a remote* computer system ...; *processing and converting* the audio data into standard audio data *at the remote* computer system; [and] *transmitting* the standard audio data *to an interfacing* computer system.”

In contrast, Kimura discloses a transmission terminal 100 that sends media information to a multi-media conversion server (e.g., elements 101, 103, and 107), which in turn converts the media information into a suitable format before sending it to a receiving terminal 5. Kimura, ¶ 0012 and 0043-0046. Referring to Fig. 1, Kimura discloses a distribution server 101 between the transmission terminal 100 and the receiving terminal 5. Kimura, ¶ 44. Moreover, the distribution server 101 interacts with a terminal database server 107 and a speech and video synthesis server 103. Kimura, ¶ 0045 and 0046. As discussed below, the various processes and conversions are carried out by the servers 101, 103, and 107, rather than the terminals 100 and 5. For these reasons, as explained in the following three hypothetical arguments, Kimura lacks either the act of “detecting audio data generated at a remote computer system,” or the act of “processing and converting the audio data into standard audio data at the remote computer system,” recited in independent claim 9.

For the sake of a first hypothetical argument, if the transmission terminal 100 in Kimura is interpreted as the remote computer system in claim 9 and if the receiving terminal 5 in Kimura is interpreted as the interfacing computer system in claim 9, then Kimura is missing “processing and converting the audio data into standard audio data *at the remote computer system.*” (Emphasis added). Specifically, in Kimura, conversion of the media information is performed at the multi-media conversion server (e.g., 101, 103, or 107), and not at the transmission terminal 100 (hypothetically interpreted as the “remote computer system”). *See id.* Thus, according to this first hypothetical argument, Kimura lacks the act of “processing and

converting the audio data into standard audio data at the remote computer system,” as recited in independent claim 9.

Similarly, for the sake of a second hypothetical argument, if the transmission terminal 100 in Kimura is interpreted as the remote computer system in claim 9 and if the multi-media conversion server (e.g., 101, 103, or 107) in Kimura is interpreted as the interfacing computer system in claim 9, then Kimura is missing “processing and converting the audio data into standard audio data *at the remote computer system.*” (Emphasis added). Specifically, in Kimura, conversion of the media information is performed at the multi-media conversion server (e.g., 101, 103, or 107), and not at the transmission terminal 100 (hypothetically interpreted as the “remote computer system”). *See id.* Thus, according to this second hypothetical argument, Kimura lacks the act of “processing and converting the audio data into standard audio data at the remote computer system,” as recited in independent claim 9. In other words, regardless of whether the claimed “interfacing computer system” is hypothetically interpreted as the receiving terminal 5 (first hypothetical) or as the multi-media conversion server (e.g., 101, 103, or 107 – second hypothetical), the claimed “remote computer system” cannot be equated with the transmission terminal 100 to anticipate claim 9.

Finally, for the sake of a third hypothetical argument, if the multi-media conversion server (e.g., 101, 103, or 107) in Kimura is interpreted as the remote computer system in claim 9 and if the receiving terminal 5 in Kimura is interpreted as the interfacing computer system in claim 9, then Kimura is missing “detecting audio data generated at a *remote computer system.*” Specifically, in Kimura, the media information is generated at the transmission terminal 100 before being sent to the multi-media conversion server (e.g., 101, 103, or 107 - hypothetically interpreted as the “remote computer system”) for conversion. *See id.* Thus, the media information is not generated at the multi-media conversion server. *See id.* For these reasons, according to this third hypothetical argument, Kimura lacks the act of “detecting audio data generated at a remote computer system,” as recited in independent claim 9.

It should be clear, based on the three hypotheticals discussed above, that there is no way to interpret Kimura to disclose all features of independent claim 9. In view of this deficiency, Kimura cannot anticipate independent claim 9 or its dependent claims. For these reasons, Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 102.

Claim Rejections under 35 U.S.C. § 103(a)

The Examiner rejected claims 4-6 under 35 U.S.C. § 103(a) as being rendered obvious by Todd in view of U.S. Patent No. 5,734,119 to France et al. ("France"). The Examiner rejected claims 7-8 under 35 U.S.C. § 103(a) as being rendered obvious by Todd in view of Kimura. The Examiner rejected claims 12-13 under 35 U.S.C. § 103(a) as being rendered obvious by Kimura in view of U.S. Publication No. 2002/0178295 to Buczek et al. ("Buczek"). The Examiner rejected claims 14-16 and 20 under 35 U.S.C. § 103(a) as being rendered obvious by Todd in view of U.S. Patent No. 6,321,348 to Kobata ("Kobata"). The Examiner rejected claim 18 under 35 U.S.C. § 103(a) as being rendered obvious by Todd and Kobata in view of Compaq Remote System Management for Industry-Standard Servers ("Compaq"). The Examiner rejected claims 17 and 19 under 35 U.S.C. § 103(a) as being rendered obvious by Todd and Kobata in view of France. Applicants respectfully traverse these rejections.

Legal Precedent

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (PTO Bd. App. 1979). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d. 1430 (Fed. Cir. 1990). Accordingly, to establish a *prima facie* case, the Examiner must not only show that the combination includes *all* of the claimed

elements, but also a convincing line of reason as to why one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985). The Examiner must provide objective evidence, rather than subjective belief and unknown authority, of the requisite motivation or suggestion to combine or modify the cited references. *In re Lee*, 61 U.S.P.Q.2d. 1430 (Fed. Cir. 2002). Moreover, a statement that the proposed modification would have been “well within the ordinary skill of the art” based on individual knowledge of the claimed elements cannot be relied upon to establish a *prima facie* case of obviousness without some *objective reason to combine* the teachings of the references. *Ex parte Levengood*, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993); *In re Kotzab*, 217 F.3d 1365, 1371, 55 U.S.P.Q.2d. 1313, 1318 (Fed. Cir. 2000); *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 U.S.P.Q.2d. 1161 (Fed. Cir. 1999).

Deficiencies of Rejection of Dependent Claims 4-6

Turning to the claims, dependent claims 4-6 depend from independent claim 1. Applicants respectfully submit that claims 4-6 are allowable based on this dependency, because France does not cure the deficiencies in Todd, which are described above. Specifically, France does not disclose or suggest both “detecting audio settings of the remote computer system,” and “configuring audio circuitry of the interfacing computer system based on the audio settings.” For at least these reasons, claims 4-6 are believed to be allowable over the cited references taken alone or in hypothetical combination with each other.

In addition, the Examiner has not shown the requisite motivation or suggestion to modify or combine the cited references to reach the present claims. As summarized above, the Examiner must provide objective evidence, rather than subjective belief and unknown authority, of the requisite motivation or suggestion to combine or modify the cited references. *In re Lee*, 61 U.S.P.Q.2d. 1430 (Fed. Cir. 2002). In the present rejection, the Examiner combined Todd and France based on the *conclusory and subjective statement* that “it would provide a high fidelity audio transmission thus allow audio data to be reproduced exactly as originally by using wavetable data.”

Office Action, pp. 6. Accordingly, Applicants challenge the Examiner to produce *objective evidence* of the requisite motivation or suggestion to combine the cited references or withdraw the rejection of claims 4-6.

Deficiencies of Rejection of Dependent Claims 7-8

Dependent claims 7-8 depend from independent claim 1. Applicants respectfully submit that claims 7-8 are allowable based on this dependency, because Kimura does not cure the deficiencies in Todd described above. Specifically, Kimura does not disclose or suggest both “detecting audio settings of the remote computer system,” and the act of “configuring audio circuitry of the interfacing computer system based on the audio settings,” as recited in independent claim 1. For at least these reasons, claims 7-8 are believed to be allowable over the cited references taken alone or in hypothetical combination with each other.

In addition, the Examiner has not shown the requisite motivation or suggestion to modify or combine the cited references to reach the present claims. As summarized above, the Examiner must provide objective evidence, rather than subjective belief and unknown authority, of the requisite motivation or suggestion to combine or modify the cited references. *In re Lee*, 61 U.S.P.Q.2d. 1430 (Fed. Cir. 2002). In the present rejection, the Examiner combined Todd and Kimura based on the *conclusory and subjective statement* that “it would provide an efficient communication system which receives and transmits information containing video and speech/audio information between server and receiving computer.” Office Action, pp. 8. Accordingly, Applicants challenge the Examiner to produce *objective evidence* of the requisite motivation or suggestion to combine the cited references or withdraw the rejection of claims 7-8.

Deficiencies of Rejection of Dependent Claims 12-13

Dependent claims 12 and 13 depend from independent claim 9. Applicants respectfully submit that claims 12-13 are allowable based on this dependency, because Buczek does not cure the deficiencies in Kimura described above. Specifically, Buczek does not disclose or suggest both “detecting audio data generated at a remote

computer system,” and “processing and converting the audio data into standard audio data at the remote computer system” as recited in independent claim 9. For at least these reasons, claims 12-13 are believed to be allowable over the cited references taken alone or in hypothetical combination with each other.

In addition, the Examiner has not shown the requisite motivation or suggestion to modify or combine the cited references to reach the present claims. As summarized above, the Examiner must provide objective evidence, rather than subjective belief and unknown authority, of the requisite motivation or suggestion to combine or modify the cited references. *In re Lee*, 61 U.S.P.Q.2d. 1430 (Fed. Cir. 2002). In the present rejection, the Examiner combined Kimura and Buczek based on the *conclusory and subjective statement* that “it would provide an efficient communication system for managing and operating distributed devices via the Internet.” Office Action, pp. 9. Accordingly, Applicants challenge the Examiner to produce *objective evidence* of the requisite motivation or suggestion to combine the cited references or withdraw the rejection of claims 12-13.

Deficiencies of Rejection of Independent Claim 14 and Its Dependent Claims

Independent claim 14 recites a system comprising “an audio configuration analysis module adapted to identify and copy audio settings of the remote computer system[, and] an audio configuration setup module adapted to configure audio circuitry of an interfacing computer system based on the audio settings.”

In contrast, Todd discloses a computer system 110 that transmits its “configuration data” to a remote data source 130, such that the remote data source 130 can identify conflicts in the configuration of the computer system 110 and transmit software “revisions” back to the computer system 110 to fix the configuration conflicts. Todd, col. 3, lines 19-33; col. 12, lines 1-8; col. 13, lines 5-15. As such, Todd lacks either “an audio configuration analysis module adapted to identify and copy audio settings of the remote computer system,” or “an audio configuration setup module adapted to configure audio circuitry of an interfacing computer system based on the audio settings,” as recited in independent claim 14. Specifically, in Todd, the

computer system 110 transmits its configuration data, and it is the computer system's configuration conflicts which are repaired. *See id.* Thus, in Todd, the configuration data is taken from the same system (the computer system 110) that is repaired. In contrast, in claim 14, audio settings of the *remote computer system* are identified and copied, but audio circuitry of an *interfacing computer system* is configured based on the audio settings. Todd, therefore, lacks one or more of the features recited in claim 14.

Kobata suffers from the same deficiencies and, thus, cannot obviate the deficiencies of Todd. Kobata discloses a consulting system which detects the configuration data of a client. *See* Kobata, col. 2, lines 30-35; Fig. 3. The consulting system then analyses the client's configuration data, and transmits appropriate corrective measures back to the client. *See* Kobata, col. 2, lines 30-37. As such, Kobata lacks either "an audio configuration analysis module adapted to identify and copy audio settings of the remote computer system," or "an audio configuration setup module adapted to configure audio circuitry of an interfacing computer system based on the audio settings," as recited in independent claim 14. Specifically, in Kobata, the client transmits its configuration data, and it is the client's configuration conflicts which are repaired. Thus, in Kobata, the configuration data is taken from the same system (the client) that is repaired. In contrast, in claim 14, audio settings of the *remote computer system* are identified and copied, but audio circuitry of an *interfacing computer system* is configured based on the audio settings. Kobata, therefore, lacks one or more of the features recited in claim 14. Because Todd and Kobata suffer from the same deficiency, they cannot be combined to render independent claim 14 obvious.

In addition, the Examiner has not shown the requisite motivation or suggestion to modify or combine the cited references to reach the present claims. As summarized above, the Examiner must provide objective evidence, rather than subjective belief and unknown authority, of the requisite motivation or suggestion to combine or modify the cited references. *In re Lee*, 61 U.S.P.Q.2d. 1430 (Fed. Cir. 2002). In the present rejection, the Examiner combined the Todd and Kobata based on the

conclusory and subjective statement that "it would provide an efficient communication system for managing, monitoring and provisioning appropriate software or consulting services based on the user's infrastructure data monitoring." Office Action, pp. 11. Accordingly, Applicants challenge the Examiner to produce *objective evidence* of the requisite motivation or suggestion to combine the cited references, or remove the foregoing rejection under 35 U.S.C. § 103.

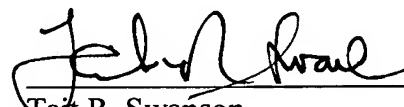
In view of these deficiencies, Todd and Kobata, taken alone or in hypothetical combination, cannot support a *prima facie* case of obviousness of independent claim 14 or its dependent claims. For these reasons, the Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 103.

Conclusion

Applicants respectfully submit that all pending claims should be in condition for allowance. However, if the Examiner believes certain amendments are necessary to clarify the present claims or if the Examiner wishes to resolve any other issues by way of a telephone conference, the Examiner is kindly invited to contact the undersigned attorney at the telephone number indicated below.

Respectfully submitted,

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